

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA)
)
)
 VS.) CRIMINAL ACTION NO.
) B-18-CR-8
)
)
 RODNEY MESQUIAS, HENRY)
 MCINNIS AND FRANCISCO PENA)
)

TRIAL - DAY TWELVE
BEFORE THE HONORABLE ROLANDO OLVERA
NOVEMBER 6, 2019

A P P E A R A N C E S

FOR THE UNITED STATES:

MR. KEVIN LOWELL
MR. ANDREW SWARTZ
MR. JACOB FOSTER
ASSISTANT UNITED STATES ATTORNEY
BROWNSVILLE, TEXAS 78520

FOR THE DEFENDANT RODNEY MESQUIAS:

MR. CHARLES BANKER
ATTORNEY AT LAW
118 Pecan Boulevard
McAllen, Texas 78501

MR. HECTOR CANALES
MR. TONY CANALES
ATTORNEYS AT LAW
2601 Morgan Avenue
Corpus Christi, Texas 78405

1 FOR THE DEFENDANT HENRY MCINNIS:

2 MR. ED CYGANIEWICZ
3 ATTORNEY AT LAW
4 1000 E. Madison Street
5 Brownsville, Texas 78520

6 FOR THE DEFENDANT FRANCISCO PENA:

7 MR. ROBERT GUERRA
8 ATTORNEY AT LAW
9 55 Cove Circle
10 Brownsville, Texas 78521

11 FOR THE DEFENDANT FRANCISCO PENA:

12 MS. ADRIANA ARCE-FLORES
13 ATTORNEY AT LAW
14 1414 Victoria Street
15 Laredo, Texas 780404

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1 THE COURT: Thank you, every one. Please
2 remain standing for the jury.

3 COURT SECURITY: All rise for the jury.

4 (Jury in.)

5 THE COURT: Thank you, every one. Please be
6 seated.

7 For the record, the Court has received the
8 jury's note time stamped at 1:40 p.m. that the jury's
9 verdict is ready.

10 Who is the foreperson -- would the
11 foreperson of the jury please stand.

12 Have you -- has the jury reached a verdict,
13 ma'am?

14 JURY FOREPERSON: Yes, Your Honor.

15 THE COURT: Would you please hand the jury
16 charge to the Marshal, please.

17 Ms. Sandra.

18 Thank you, ma'am, please have a seat.

19 All right. For the record, the verdict of
20 the jury is as follows: Number one, we, the jury, find
21 the Defendant Rodney Mesquias guilty; number two, we,
22 the jury, find the Defendant Rodney Mesquias guilty;
23 number three, we, the jury, find the Defendant Rodney
24 Mesquias guilty; number four, we, the jury, find the
25 Defendant Rodney Mesquias guilty; number five, we the

1 jury, find the Defendant Rodney Mesquias guilty; number
2 six, we, the jury, find the Defendant Rodney Mesquias
3 guilty; number seven, we, the jury, find the Defendant
4 Rodney Mesquias guilty; number eight, we, the jury, find
5 the Defendant Rodney Mesquias guilty; number nine, we,
6 the jury, find the Defendant Rodney Mesquias guilty;
7 number ten, we, the jury, find the Defendant Rodney
8 Mesquias guilty; number 11, we, the jury, find the
9 Defendant Henry McInnis guilty; number 12, we, the jury,
10 find the Defendant Henry McInnis guilty; number 13, we,
11 the jury, find the Defendant Henry McInnis guilty;
12 number 14, we, the jury, find the Defendant Henry
13 McInnis guilty; number 15, we, the jury, find the
14 Defendant Henry McInnis guilty; number 16, we, the jury,
15 find the Defendant Henry McInnis guilty; number 17, we,
16 the jury, find the Defendant Henry McInnis guilty;
17 number 18, we, the jury, find the Defendant Henry
18 McInnis guilty; number 19, we, the jury, find the
19 Defendant Henry McInnis guilty; number 20, we, the jury,
20 find the Defendant Francisco Pena guilty; number 21, we,
21 the jury, find the Defendant Francisco Pena guilty;
22 number 22, we, the jury, find the Defendant Francisco
23 Pena guilty; number 23, we, the jury, find the Defendant
24 Francisco Pena guilty; number 24, we, the jury, find
25 Defendant Francisco Pena guilty; and the last question,

1 we, the jury, find the Defendant Francisco Pena, which
2 is number 25, excuse me, we, the jury, find the
3 Defendant Francisco Pena guilty.

4 It is signed by the foreperson effective
5 today.

6 Counsel, is there a request to poll the
7 jury?

8 MR. TONY CANALES: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen of the
10 jury, the -- the defense has now asked that I poll the
11 jury just to confirm this is your unanimous verdict.
12 Quite simply, I'm going to ask each one of you to stand,
13 we'll start with the back row.

14 Sir, please stand. Is this your verdict,
15 sir?

16 JUROR: Yes, Your Honor.

17 THE COURT: Thank you, sir.

18 Sir, is this your verdict?

19 JUROR: Yes.

20 THE COURT: Thank you, sir.

21 Ma'am, is this your verdict?

22 JUROR: Yes.

23 THE COURT: Thank you.

24 Madam foreperson, is this your verdict?

25 JUROR: Yes, Your Honor.

1 THE COURT: Thank you.
2 Sir, is this your verdict, sir?
3 JUROR: Yes, sir.
4 THE COURT: Thank you, sir.
5 Next, sir, is this your verdict?
6 JUROR: Yes, Your Honor.
7 THE COURT: Thank you, sir.
8 Let's start with the front row.
9 Ma'am, is this your verdict?
10 JUROR: Yes.
11 THE COURT: Thank you, ma'am.
12 And, sir, is this your verdict?
13 JUROR: Yes, sir.
14 THE COURT: Thank you.
15 Ma'am, is this your verdict?
16 JUROR: Yes.
17 THE COURT: Thank you, please be seated.
18 Sir?
19 JUROR: Yes, Your Honor.
20 THE COURT: Is this your verdict?
21 JUROR: Yes, Your Honor.
22 THE COURT: Thank you, sir.
23 Ma'am, is this your verdict?
24 JUROR: Yes, sir.
25 THE COURT: Thank you.

1 And lastly, sir, is this your verdict?

2 JUROR: Yes. Yes, Your Honor.

3 THE COURT: Thank you. The jury has now
4 been polled, the jury -- the Court hereby accepts the
5 jury's verdict as unanimous.

6 Ladies and gentlemen of the jury, at this
7 time, I want to thank you for your service. You're now
8 excused as jurors. Please report to the jury room. I
9 will attempt to thank you all in person in a -- in a few
10 moments.

11 In addition, if necessary, we do have your
12 juror certificates, those certificates are available at
13 the District Clerk's office downstairs. And let me just
14 add some further miscellaneous instructions. Obviously,
15 when this trial commenced, I instructed you that were
16 you not to speak about this case with anyone. You are
17 no longer under that instruction. You are free to
18 discuss the case if you should -- if you desire to do so
19 with anyone you want, whether it's the attorneys or the
20 press. You're also free not to discuss the case, you're
21 under no obligation to discuss the case with anyone if
22 you elect not to do so. Every juror is different, some
23 jurors like to talk to attorneys and press, other jurors
24 do not want to do so.

25 Again, your names have been -- have remained

1 confidential, the Court will not release your names to
2 the public, but if you waive that confidentiality and
3 elect to speak to other people, that's up to you. With
4 that being said, I thank you for your service and you're
5 hereby excused.

6 COURT SECURITY: All rise for the jury.

7 (JURY OUT.)

8 THE COURT: Procedurally, would the
9 Defendants please remain standing. Gentlemen, all three
10 of you, Mr. Rodney Mesquias, Mr. Henry McInnis,
11 Mr. Francisco Pena, the Court hereby has received the
12 jury's verdict and hereby accepts the verdict in terms
13 of all three of you as guilty as charged.

14 You may be seated.

15 It's my understanding that the attorneys
16 wanted to bring up a miscellaneous or additional matter
17 having to do with forfeiture; is that correct?

18 MR. SWARTZ: Yes, Your Honor.

19 THE COURT: Mr. Swartz, please proceed.

20 MR. SWARTZ: The Government filed a
21 supplemental notice of forfeiture, which is docket
22 number 346.

23 THE COURT: Gentlemen, you may sit down.

24 MR. SWARTZ: And --

25 THE COURT: I -- I'm sorry, please proceed.

1 MR. SWARTZ: Yes, Your Honor. The
2 Government filed earlier last week a supplemental notice
3 of forfeiture as docket number 346. Defendant Mesquias
4 does have the right to have the jury hear the forfeiture
5 notice. I've conferred with counsel for Mr. Mesquias
6 and they have indicated that they wish to waive that
7 right and proceed on the papers.

15 THE COURT: Mr. Canales, is that correct?

16 MR. TONY CANALES: That's correct,
17 Your Honor.

18 THE COURT: All right. The Court will allow
19 the waiver of the jury's presence as to this issue.

20 MR. SWARTZ: Thank you, Your Honor.

21 THE COURT: All right. What time frame are
22 we looking in terms of the filing of this documentation?

23 MR. SWARTZ: Within approximately two weeks,
24 Your Honor.

25 THE COURT: All right. Thank you.

1 Gentlemen, anything else that needs to be
2 brought to my attention before we recess?

3 MR. LOWELL: Your Honor, Your Honor, the
4 only other issue is -- is bond and the custody of the
5 Defendants.

12 THE COURT: Counsel?

13 MR. CYGANIEWICZ: Well, Judge, on behalf of
14 Mr. McInnis, we'd ask that he remain out on his bond.
15 He's been in full compliance with all rules and
16 regulations and his strict conditions of pretrial
17 release, he's -- it's not a crime of violence, he's not
18 a threat to anyone, he's not a risk to flee. He'll
19 surrender a passport if that's not already done or if he
20 has one. He's got a family, children, a job.

21 I think the normal process is in this Court,
22 or most courts, that if they're in full compliance even
23 after a conviction in a case of this nature, we're
24 asking that they remain out on their pretrial release
25 bond, Your Honor.

1 MR. GUERRA: Your Honor, on behalf of
2 Defendant Francisco Pena, we also ask that he be
3 maintained out on his bond. Over the course of the
4 pretrial release, he has not violated any of the terms
5 and conditions of his pretrial release.

6 As Mr. Cyganiewicz said, this is not a crime
7 of violence, he's not a flight risk, he has a -- a
8 family. Given, again, like, as the Court says, I
9 believe he would need some time to get his affairs in
10 order as well between now and the time of sentencing and
11 for -- for those reasons we ask that he be released --
12 continue to be released on bond.

13 THE COURT: Mr. Canales.

14 MR. HECTOR CANALES: Your Honor, on behalf
15 of Rodney Mesquias, we would echo the -- and make the
16 same request based on the same grounds. There's been
17 compliance, he has a job, he has family, there is no
18 flight risk here, and -- and if he has a passport that's
19 not already been surrendered we -- we would do that as
20 well.

1 the Court will allow the Defendants to remain out on
2 bond subsequent -- but subsequent to, number one, the
3 submission of their passports to probation; in addition,
4 you probably need some location monitoring hardware.

5 Here we go.

6 PROBATION OFFICER: Yes, Your Honor.

7 THE COURT: Probation?

8 PROBATION OFFICER: Yes.

9 THE COURT: Please come forward. All right.
10 Let's address the first issue. Do -- do you know or
11 does anybody on behalf of the Government know whether --
12 or can confirm whether the three Defendants have
13 submitted their passports to probation?

14 PROBATION OFFICER: I am not certain if they
15 have submitted their passports, Your Honor. I know that
16 Mr. Mesquias is being supervised in San Antonio,
17 Mr. McInnis in Houston and Mr. Pena in Laredo.

18 Currently, they are not on electronic
19 monitoring.

20 THE COURT: All right.

21 PROBATION OFFICER: If --

22 THE COURT: Electronic -- electronic
23 monitoring would be required and the -- as I said, the
24 submission of their passports --

25 PROBATION OFFICER: Okay.

1 THE COURT: -- will be the requirements
2 pending my final ruling on the issue.

3 MR. HECTOR CANALES: Your Honor, I would --
4 I would request that my client, since his primary
5 residence is San Antonio, my office is in Corpus
6 Christi, that he be allowed to travel -- in between now
7 in preparation for the upcoming responses and sentencing
8 issues that he be allowed to travel to Corpus Christi to
9 my office so that we could handle legal -- legal
10 matters.

11 THE COURT: Again, subject to my rulings
12 with the electronic monitoring and -- and the submission
13 of the passport, he'll be allowed to travel from
14 San Antonio to Corpus to Brownsville in terms of
15 whatever hearings are required.

16 Logistics in terms of your client's,
17 gentlemen?

18 MR. GUERRA: Your -- Your Honor, Dr. --
19 Mr. Pena lives in Laredo, Judge Flores has an office in
20 Laredo. My understanding was that he had been complying
21 with probation in Laredo as well. So, again, to the
22 extent that permission is necessary, we would ask that
23 he be allowed to return home to Laredo under those
24 conditions so that preparations could be made for
25 whatever responses need to be filed, Your Honor.

1 THE COURT: And Mr. Cyganiewicz, logistics,
2 where does Mr. --

3 MR. CYGANIEWICZ: He's reporting in Houston,
4 Your Honor, that's still the Southern District. Even if
5 you restrict his travel to the Southern District, that
6 would be sufficient for me to visit with him or confer
7 with him.

15 PROBATION OFFICER: Yes, Your Honor.

16 THE COURT: Anything --

17 PROBATION OFFICER: Will the three
18 Defendants please report to probation office upon
19 conclusion of this hearing so that we can give them
20 instructions?

21 THE COURT: All right. Gentlemen --

22 MR. GUERRA: Yes, Your Honor.

23 THE COURT: All right. Any other
24 miscellaneous issues?

25 MR. GUERRA: Well, Your Honor, I -- I do

1 have a -- a point of clarification. Since Dr. Pena
2 lives in Laredo, he does not have his passport, I
3 believe, on him right now, if it hasn't been turned in
4 already, so, to the extent that he would need to turn
5 them in, I believe it would need to be done in -- in
6 Laredo.

7 THE COURT: Well, again, logistic --
8 logistically, I can understand arrangements need to be
9 made, but the electronic monitoring needs to be put in
10 place today --

11 MR. GUERRA: Yes, Your Honor.

12 THE COURT: -- before he leaves.

13 MR. GUERRA: Yes.

14 THE COURT: If his passport has already been
15 submitted, well, that resolves the issue. If it hasn't,
16 then whatever arrangements need to be done in Laredo to
17 do that as quickly as possible.

18 MR. GUERRA: It -- it's my understanding,
19 Your Honor, it's already been turned in so --
20 previously.

21 THE COURT: That -- that resolves the issue.

22 MR. GUERRA: That resolves that, yes.

23 THE COURT: Now, how much time do you need
24 to prepare a -- how soon do you want the hearing on
25 the -- on the -- on the bond issue, forfeiture bond and

1 sentencing, Mr. Lowell?

2 MR. LOWELL: Your Honor, this week, later
3 this week or early next week.

4 THE COURT: Gentlemen, how much time do you
5 need?

6 MR. CYGANIEWICZ: We need more than later
7 this week, I think, Your Honor. I mean, today's
8 Wednesday, I believe.

9 THE COURT: All right. Gentlemen, again,
10 the -- the trial was supposed to hypothetically last
11 four weeks, we're ahead of schedule. And, again, I'm
12 not making a final ruling, but I'm going to give -- you
13 shouldn't need -- in the event I rule in favor of the
14 Government, the -- the Defendants need to start getting
15 their affairs in order, so I'll -- I'll give them an
16 amount of time.

17 Ms. Sandra.

18 (Discussion off the record.)

19 THE COURT: Gentlemen, the -- Monday is a
20 federal holiday, I will allow the Defendants to get
21 their affairs in order and -- and the defense to prepare
22 over the weekend, we will have the hearing on this issue
23 at Tuesday at 11:00 a.m., all right?

24 Tuesday, what's the date?

25 THE CLERK: November 12th at 11:00 a.m.

1 MR. CYGANIEWICZ: I -- I have a matter in
2 San Antonio on -- on that morning at 9:00, federal
3 court.

4 THE COURT: All right.

5 MR. CYGANIEWICZ: I don't think I can get
6 back by 11:00 on Tuesday.

7 THE COURT: Are you available in the
8 afternoon, Mr. Cyganiewicz, or the next day?

9 MR. CYGANIEWICZ: The next day.

10 THE COURT: Next day. We can do it
11 Wednesday.

12 MR. CYGANIEWICZ: Thank you.

13 THE COURT: Let's do -- Sandra, what --
14 our sentencing's are --

15 (Discussion off the record.)

16 THE COURT: All right. Set it for Wednesday
17 afternoon at 2:00 p.m.

18 MR. CYGANIEWICZ: Thank you, Your Honor.

19 THE COURT: Anything else, gentlemen?

20 MR. LOWELL: No, Your Honor.

21 MR. GUERRA: No, Judge.

22 THE COURT: All right. Obviously, to all
23 three Defendants, the Court has the right to obviously
24 submit you to the Marshals immediately, the Court is
25 granting you this favor in terms of preparing for the

1 hearing on Wednesday to -- to leave the courtroom, but,
2 obviously, make no mistake, if you should do anything
3 that would violate the terms of your bond, it would only
4 be worse for you. So I do admonish you to obviously pay
5 attention to your attorneys, do not do anything that
6 could be in any way conceived to be a violation of your
7 bond, it would only make matters worse. So I expect to
8 see all three of you back with your attorneys Wednesday
9 at 2:00 p.m.

10 Anything else, gentlemen?

11 MR. CYGANIEWICZ: No, Your Honor.

12 MR. GUERRA: No, Your Honor.

13 THE COURT: Ms. Sandra, as the case manager,
14 will be announcing the future sentencing dates as well.

15 THE CLERK: Because it's a complex case, of
16 course it's not your regular sentencing dates, the
17 initial PSR is due February 5th, 2020; objections are
18 due April 9th, 2020; final PSR is due May 7th, 2020 with
19 sentencing set for June 17, 2020 at 10:00 a.m.

20 THE COURT: All right. Anything else?

21 MR. LOWELL: No, Your Honor.

22 THE COURT: Thank you, every one. We'll be
23 in recess.

24 (COURT IN RECESS.)

25 THE COURT: Ladies and gentlemen, the jury

1 has been excused, they've requested that -- that their
2 identities remain confidential. They do not wish to
3 speak to either the press or either of the attorneys,
4 but on behalf of all parties, obviously, I did thank
5 them -- thank them for their service.

6 But the Marshals will be keeping everyone in
7 the courtroom until the jury has been secretly removed
8 from the building. Thank you for your patience.

9 MR. TONY CANALES: We can approach them
10 later on and speak to them?

11 THE COURT: Well, Mr. Canales, they
12 specifically said they didn't want to speak to anyone as
13 of right now. If they change their minds in the future,
14 again, that would be up to them, but, as of today, as of
15 right now, they don't want to speak to anybody.

16 MR. TONY CANALES: Okay.

17 (COURT IN RECESS.)

18

19 REPORTER'S CERTIFICATE

20

21 I certify that the foregoing is a correct transcript
22 from the record of proceedings in the above-entitled
23 matter.

24

/s/ Sheila E. Perales.

25 SHEILA E. HEINZ-PERALES CSR RPR CRR
 Exp. Date: January 31, 2021